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Supreme Court, U.S.
FILED

No. 981985 FEB 1 1999

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In The
Supreme Court of the United States
October Term, 1999

IN RE: DOROTHY L. MORRISSEY,

Petitioner (Habeas Corpus)

DOROTHY L. MORRISSEY,
By Catherine M. Jackson and Michael J. Morrissey,
daughter and son of petitioner and her next-of-friends,
Petitioner,

v.

GREER JACKSON,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

Dorothy L. Morrissey,
By her children as her next-of-friends, *pro se*,
Catherine M. Jackson and Michael J. Morrissey
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936

QUESTIONS PRESENTED

1. Whether, in a Habeas Corpus petition for unlawful civil confinement in a nursing home against a person's will by a stranger appointed as guardian, the District Court can refuse to hear the petition brought by the petitioner's adult children on the ground that the Federal court does not have jurisdiction because it is a "domestic relations" matter.

2. Whether, in a Habeas Corpus petition for unlawful civil confinement of a competent adult in a nursing home against that person's will by a stranger appointed as guardian, the District Court can refuse to hear issues of wrongful deprivation of one's Liberty, Privacy, Due Process, the Taking of Property without a hearing, and violation of Familial Rights, all on the ground that the Federal court does not have jurisdiction over domestic relations matters.

3. Whether, in a Habeas Corpus petition for unlawful civil confinement of an adult in a nursing home by a stranger

to her, where the guardianship hearing was held in the absence of the respondent to that hearing, and where her power of attorney was excluded and denied participation in the hearing, the District Court can refuse to hear the petition brought by the petitioner's adult children alleging a violation of Due Process and other rights on the ground that the Federal court does not have jurisdiction to decide these alleged federal Constitutional violations by ruling this to be a domestic relations case.

4. Whether, in a Habeas Corpus petition for unlawful civil confinement of an adult in a nursing home against her will by a guardian, where the guardian was given total power and control, without limitation, over the person and property of the confined adult without any reference or application of the least restrictive means rule, the federal court can dismiss the action and avoid the issue on the ground that it has no jurisdiction of this as a domestic relations case.

PARTIES IN THE COURT BELOW

The parties to the proceeding below were Petitioner, Dorothy L. Morrissey, by her daughter Catherine M. Jackson and her son Michael J. Morrissey, as her adult children and next-of-friends. Dorothy Morrissey, being confined and under the control of respondent, did not have access to the court herself. Her adult children who lived with, and in the same neighborhood as their mother, Dorothy L. Morrissey, appeared pro se.

Respondent was Greer Jackson, who, over said children's objections, was appointed guardian to Dorothy L. Morrissey and by the broad sweeping control given him, is the one responsible for the civil imprisonment of Dorothy L. Morrissey away from her home and family.

RULE 29.6 STATEMENT

Petitioner, and her adult children, are individuals, and no company, business or corporate affiliation or ownership is involved in this case.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED..... i

PARTIES IN THE COURT BELOW..... iii

TABLE OF AUTHORITIES..... v

OPINIONS BELOW..... 1

JURISDICTION..... 1

STATUTES INVOLVED..... 2

STATEMENT OF THE CASE..... 3

REASONS FOR GRANTING THE WRIT..... 13

I. THE DISTRICT COURT'S RULING THAT IT DID NOT HAVE JURISDICTION BY LABELING THIS AS A "DOMESTIC RELATIONS" MATTER IS CONTRARY TO WELL-ESTABLISHED FEDERAL HABEAS CORPUS CASE LAW THAT PROTECTS THE FAMILY BOND AND INDIVIDUALS IN THEIR FREEDOM AND LIBERTY..... 13

II. THE THREE CASES RELIED ON BY THE DISTRICT COURT AS THE SOLE LEGAL AUTHORITY CITED FOR ITS DISMISSAL ARE CLEARLY DISTINGUISHED FROM THE PRESENT CASE AND DO NOT PROVIDE PRECEDENT FOR DISMISSAL OF THIS

HABEAS PETITION FOR LACK OF JURISDICTION 27

CONCLUSION..... 28

CERTIFICATE

APPENDIX

TABLE OF AUTHORITIES

Cases	Page
Addington vs. Texas, 441 U.S. 418, 425-27, 60 L. Ed. 2d 323, 99 S. Ct. 1804 (1979)	5
Bellotti v. Baird, 428 U.S. 132, 147-148, 96 S. Ct. 2857, 2866-2867, 49 L. Ed. 2d 788 (1976)	19
Carter v. Procunier, 755 F.2d 1126 (C.A. 5 (Tex.), 1985).	16
Clark v. Jeter, 486 U.S. 456, 464, 108 S. Ct. 1910, 1915-1916, 100 L. Ed. 2d 465 (1988)	19
Cleveland Bd. Of Education v. LaFleur, 414 U.S. 632, 639-640, 94 S. Ct. 791, 796, 39 L. Ed. 2d 52 (1974)	21
Collins vs. Straight, Inc, 748 F.2d 916 (4th Cir., 1984, E.D. Va., 1983)	20
Doe v. Bolton, 410 U.S. 179, 194-195, 199, 93 S. Ct. 739, 748-749, 751, 35 L. Ed. 2d 201 (1973)	17
Eisenstadt vs. Baird, 405 U.S. 438, 453, 92 S. Ct. 1029, 1038, 31 L. Ed. 2d 349 (1972)	21
Griswold v. Connecticut, 381 U.S. 479, 496; 85 S. Ct. 1678, 1688, 14 L. Ed. 2d 510 (1965)	24
Hemon et al. v. Office Of Public Guardian, 878 F. 2d 13 (1st Cir. 1989)	28
Hill v. Rose, 579 F. Supp. 1080 (D.C.Tenn, 1983)	16

Hodgson et al. vs. Minnesota, et al., 497 U.S. at 455, 469, 110 S. Ct. 2926, 2955, 111 L. Ed. 2d 344 (1990) 17, 19

In re Burris, 136 U.S. 586, 593-94 (1890) 27

Jones v. Shell, 572 F.2d 1278 (C.A. 8 (Ark.), 1978) 15

Lehman et al. vs. Lycoming County Children's Services Agency, 458 U.S. 502 (1982) 27

Lehr v. Robertson, 463 U.S. 248, 261, 103 S. Ct. 2985, 2993, 77 L. Ed. 2d 614 (1983) 25

May v. Anderson, 345 U.S. 528, 533 [73 S. Ct. 840, 843, 97 L. Ed. 1221] (1953) 23

Meyer v. Nebraska, 262 U.S. 390, 399-400, 43 S. Ct. 625, 626-627, 67 L. Ed. 1042 (1923) 22, 23, 24

Moore v. East Cleveland, 431 U.S. 494, 499, 97 S. Ct. 1932, 1935, 52 L. Ed. 2d 531 (1977) 22

McKinney v. Boles, 254 F.Supp. 433 (D.C. W. Va., 1966) 16

Parham v. J.R., 442 U.S. 584, at 604-608, 99 S. Ct. 2493, at 2505-2507, 61 L. Ed. 2d 101 (1979) 17

Pfoltzer et al. vs. County of Fairfax, et al., 775 F. Supp. 874 (E.D. Va., Alex. Div., 1991) 14-15

Pierce v. Society of Sisters, 268 U.S. 510, 535, 45 S. Ct. 571, 573, 69 L. Ed. 1070 (1925) 21, 24

Planned Parenthood of Central Mo. v. Danforth, 428 U.S. at 90-91, 96 S. Ct. at 2850-2851,

49 L. Ed. 2d 844 (1976) 19

Poe v. Ullman, 367 U.S. 497, 551-552, 81 S. Ct. 1752, 1781, 6 L. Ed. 2d 989 (1961) 22, 26

Preiser v. Rodriguez, 93 S. Ct. 1827, 411 U.S. 475, 36 L. Ed. 2d 439 (N.Y. 1973) 15

Prince v. Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438, 442, 88 L. Ed. 645 (1944) 20, 22, 23-24

Roberts v. United States Jaycees, 468 U.S. 609, 618-620, 104 S. Ct. 3244, 3249-3250, 82 L. Ed. 2d 462 (1984) 21-22

Rogers, et al. vs. Orrin, M.D., et al., 478 F.Supp. 1342, 1362 (USDC, D. Mass., 1979, Tauro, J.) 14

Ross v. Wainwright, 451 F.2d 298, *certiorari denied* 93 S.Ct. 98, 409 U.S. 884, 34 L. Ed. 2d 141 (C.A. Fla., 1971) 16

Skinner v. Oklahoma, 316 U.S. 535, 541 [62 S. Ct. 1110, 1113, 86 L. Ed. 1655] (1942) 23, 24

Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212, 31 L. Ed. 2d 551 (1972) 25

Strader v. Blalock, 405 F. Supp. 1155 (D.C. Va., 1975) 15

Turner v. Safley, 482 U.S. at 97, 107 S. Ct., at 2266, 96 L. Ed. 2d 64 (1987) 17, 19

U.S. ex rel. Rush v. Ziegele, 335 F. Supp. 434, *affirmed* 474 F.2d 1356 (D.C.N.J., 1971) 16-17

Whiteley v. State of Wyo., 293 F. Supp. 381, *affirmed* 416 F. 2d 36, *reversed on other grounds* 91 S. Ct. 1031, 401 U.S. 560, 28 L. Ed. 2d 306 (D. C. Wyo., 1968) 15

Whorley v. Brilhart, 359 F.Supp. 539 (D.C. Va., 1973) 16

Wisconsin v. Yoder, 406 U.S. 205, 232, 92 S. Ct. 1526, 1538, 32 L. Ed. 2d 15 (1972) 21

Constitution of the United States

Constitutional Guarantees, general 3, 11-12, 24-25

The Due Process Clause of the Fourteenth Amendment 3, 11-12, 24

The Equal Protection Clause of the Fourteenth Amendment 24

The Eighth Amendment to the U.S. Constitution (cruel and unusual punishment) 11

The Ninth Amendment to the U. S. Constitution 24

Federal Code

28 U.S.C. Section 2254 3, 15

28 U.S.C. Section 1254(2) 28

State Code

Virginia Code Section 37.1-134 et seq. 7

Virginia Code Section 37.1-133.1 7

Rules of the supreme Court of the U.S.

Rule 20.4.(a) 2

Other

American Bar Association, "Agenda for Reform" (1989) 26-27

The *Declaration Of Independence*, In Congress, July 4, 1776 4

PETITION FOR A WRIT OF CERTIORARI

Dorothy L. Morrissey, by her adult children Catherine M. Jackson and Michael J. Morrissey as her next-of-friends, respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is Petitioner's Exh. 1. The opinion of the District Court is Petitioner's Exh 2. Neither opinion was officially reported. The District Court's denial of petitioner's Motion for Reconsideration is Exh. 3.

JURISDICTION

The judgment of the Court of Appeals was entered November 3, 1998. Petitioner's first petitioner for writ of certiorari was timely made but was returned to correct

format errors, and this filing is made within the time extension granted for this corrected filing. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1) and by 28 U.S.C. 1651(a).

In accordance with this Court's Rule 20.4. (a) concerning relief sought in the district court, Petitioner states that her guardian (respondent herein) refused to pursue an appeal in the state court. Petitioner's son did file an appeal to the appellate state court which was denied because he was not a party in the case below, based on the state trial court's denial of his motion to participate as a party to the proceeding involving his mother DLM.

Petitioner did file her habeas corpus in federal court and it is from the denial of that habeas corpus petition that this petitioner for writ of certiorari is taken.

This Petition shows that the granting of the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

STATUTES AND CONSTITUTIONAL PROVISIONS

The Constitution of the United States, and the guarantees therein to life, liberty and the pursuit of happiness; the right of Liberty, Privacy and to the enjoyment and protection of Familial Rights of the family. The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

28 U.S.C. 2254 (d)(1), (d)(2), d(6) and (d)(7) (habeas corpus relief).

STATEMENT OF THE CASE

INTRODUCTION AND SYNOPSIS

The District Court denied the Petition for Writ of Habeas Corpus by making the mistake of labeling, and looking at this, as a domestic relations case. On the basis of this mis-label, it then held that questions of custody belong in state court. In support of this conclusion, the District Court made a most significant factual error as it incorrectly said that petitioners object to their sister having custody over Dorothy L. Morrissey (DLM). This statement is incorrect and contrary to the unopposed facts of the filings. That distant, out-of-state sibling (one Lu Morrissey) does not now, and has never had or sought, custody of her mother, DLM. No

dispute has ever been presented between family members as to which one is to have custody. In fact, no custody of DLM by anyone was ever at issue. DLM is her own person in being financially independent and active in her own home, now fully paid for over her life's work. The District Court was wrong on this fact finding. Thus its ruling, based on this misstatement of fact, was erroneous and this contributed to its incorrect characterization of the case as being one of domestic relations from a family dispute over which one is to have custody. That is not what this case is about.

The issue is not about custody, just as the issue in a wrongful jail imprisonment habeas case is not about who has custody of a cell block during any particular shift. The issue here is one of wrongful control and confinement exerted over another adult by a stranger, without any compelling state interest and in violation of the guarantees of the Constitution of the United States. The forced civil imprisonment of DLM against her will destroys her and her family. It violates petitioner's fundamental right to her pursuit of Liberty and enjoyment of her Familial Rights in her own home and with her family. 1/

1/ "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The *Declaration Of Independence*, In Congress, July 4, 1776, at page 1.

This case is about wrongful control and imprisonment of another competent adult, against that person's will, where that control is exercised by a stranger, outside of the family. The imprisonment exists in the confines of a so-called nursing home where the facts are that little nursing exists there and it certainly is not a home. Respondent's control over DLM, over DLM's own adult children even, rests on the purported authority of a state court to appoint that stranger as a result of a hearing – conducted in DLM's absence and without her knowledge – that gave him instant, total control over the person and property of DLM. As this Court has warned, control by outside persons, especially to the exclusion of an individual's own family and expressed preference for her family, leads too often to civil commitments that present an extraordinary possibility of abuse to individual liberty. Addington vs. Texas, 441 U.S. 418, 425-27, 60 L. Ed. 2d 323, 99 S. Ct. 1804 (1979).

FACTS OF THE CONFINEMENT

Respondent Greer Jackson was appointed by the Henrico County Circuit Court (Richmond, Va. metro area) as guardian for Petitioner Dorothy L. Morrissey (DLM) on June 23, 1997. DLM was not present at the hearing which was held in her absence, despite the fact that the right of any responding party to a case to be present to cross-examine witnesses, present their evidence, and be present at all

incidents of the trial is one of the most fundamental protections in our legal system. Further, DLM's son, Michael J. Morrissey (MJM) was her power of attorney (POA) at the time and this POA status was confirmed by the court at that hearing. Yet MJM too was excluded from the hearing. The court at first granted MJM's motion to participate as his mother's POA but limited that participation to any matter which sought to affect that POA status. However, the state trial court never followed up on that ruling and excluded MJM from the entire hearing, without explanation. Thus, the case went to hearing without the very two persons against whom the case was directed being allowed to be present.

The case was styled as a Petition for Guardianship, and was filed by a distant, out-of-state daughter of DLM who has a history of drug abuse, a criminal drug record, is an admitted alcoholic, and has long been removed from her mother's life. The facts showed that when this daughter, named Lu Morrissey (LM) learned that DLM had given her son MJM her POA, this daughter LM became enraged with jealously and sought to cash in on her mother's property and disengage DLM from her daily life with her two closest children, Catherine M. Jackson (CAM) and MJM, who both lived with and in the neighborhood with DLM in Richmond, Va. The state court, at the conclusion of a June 23, 1997 hearing, said that there was "a dispute between the children" and, therefore, it was going to appoint a guardian. The state

court did this over DLM and her children CMJ and MJM's objections. It did so in the absence of DLM and in barring DLM's POA (her son) from participating.

Without reason, the court by-passed naming MJM or CAM as guardian to their mother, as was the logical choice as the immediate family of and closest people to DLM, and instead named a stranger. The state court, further, gave that stranger (respondent herein) complete control, without limitation, over the person and property of DLM, a person he had never met. Greer Jackson knew absolutely nothing about her. There was never any mention, much less application, of the required use of only the "least restrictive means" before the wholesale takeover of the person and property of petitioner.

DLM was not at the hearing because, just three days earlier on June 20th, she had undergone a full hip replacement surgery due to an unexpected break of her hipbone. DLM was actually still under anesthesia in the hospital at the time of the hearing. Despite the presence of a *guardian ad litem* for DLM at that hearing, that guardian ad litem said nothing, and the case proceeded in DLM's absence. The importance of a respondent in a guardianship hearing to be present and participate at all proceedings is emphasized by the *Virginia Code* section in 37.1-134 et seq., at section 37.1-133.1, which adds the statutory requirement that a respondent be notified and given the right to be present

at every stage of the proceeding. See, Exh. 4. The state court violated both DLM's Constitutional right, and its reinforced statutory mandate under Virginia law, by excluding both DLM, and her son as her POA, from the hearing. At the conclusion of that hearing, the state court ruled clearly that DLM was to continue living in her own home, with her family. As to her living anywhere else, the court held "that is not the situation here". See, Exh. 6. Yet, by respondent's subsequent conduct, this court ruling was violated and DLM's happy and financially independent life as she had known it was taken, in its entirety, from her. DLM was also taken from her closest adult children, CMJ and MJM. The three of them had shared a close and loving family life together on a daily basis.

On July 8, 1997, DLM was discharged from Chippenham hospital from her hip surgery, and medical directives were given for DLM's follow-up with the necessary physical therapy that everyone must receive in order to walk again. DLM's orthopedic doctor, Dr. Steven Jones, reported that the $50,000+ surgery went excellent, and DLM should be up and walking in a short time "better than ever". Under this guardianship control, DLM has never walked since. Instead, she has been confined to the solitude and isolation of a nursing home, and suffered the most agonizing pain, physically and emotionally, since then. One set of photographs of DLM is a part of the record of this

case. It vividly shows the emotional pain on petitioner's face, amidst one instance of the many and repeated physical injuries she has been forced to endure. See, Exh. 5.

It is significant that the state court had ruled, at the June 23, 1997 hearing, that the case was not at all about DLM living anywhere else but her home. At various times the court said that there was no issue about her living anywhere else, and it wanted to make that clear. Mrs. Morrissey was to continue living in her home. Exh. 6. Despite this directive, respondent, in pursuit of his own financial gain, never allowed DLM to return home. While keeping DLM imprisoned at a nursing home under almost inhumane conditions, respondent also failed to provide DLM with the necessary physical therapy to complete her recovery from surgery. This physical therapy was essential to allow DLM to gain full use of her new hips, and return to her full and active life.

An order was entered on January 10, 1998 against the respondent by the Henrico County court when Greer Jackson wrongly tried to interfere with DLM's property. DLM owns her home which is fully paid for, and respondent sought to take that from her for what was seen as an obvious attempt of respondent to further his own financial gain. The court blocked that attempt. In so doing, the court cited respondent's violation of Virginia law. It was also learned that an independent agency had filed a complaint against

respondent due specifically to his conduct with respect to Mrs. Morrissey, saying that Mr. Jackson was to correct his problems "before he receives another guardianship case".

A series of medical emergencies followed, with DLM being rushed to a hospital emergency room on December 31, 1997 in a life-threatening situation due to neglect in her care. Respondent barred the nursing home from telling DLM's children anything about her. Respondent blocked DLM's adult children from even attending a care-planning meeting at the facility that is routinely held with family. Respondent refused to say why is was not allowing DLM to return to her home, as the state court had directed and as DLM's orthopedic doctor had recommended in a letter he later wrote, out of frustration at her not getting the important physical therapy. DLM's church wrote respondent asking if DLM could be moved closer to her neighborhood so her church members and friends could visit her. Respondent disregarded that letter, never even answering it. Meanwhile, DLM's condition continued to severely deteriorate due to the isolation, inferior care, and lack of any physical or mental activity. It was obvious that her situation was again life threatening. Yet, respondent continued to do nothing and he continued to ignore the pleas of those closest to DLM.

On February 20, 1998, DLM's closest children, CMJ and MJM, filed on behalf of DLM a Petition for Writ of Habeas Corpus in the U. S. District Court for the Eastern

District of Virginia in Richmond. Exh. 7. A Memorandum was also filed in support of the issuance of a Temporary Restraining Order against Greer Jackson to enjoin him from continuing this confinement of DLM and separating her from her home and family. See, Exh. 8. The Petition (Exh. 7) alleges, among other things, a wrongful civil imprisonment of DLM and a violation of her Constitutional rights to Liberty, Freedom and Privacy. It also alleges a violation of the Constitutional Familial Rights of DLM as well as those of CMJ and MJM as her immediate children [Pet., para. 4.(4)]. The petition also alleges a violation of the Eight Amendment against cruel and unusual punishment [Pet., para. (5)].

Respondent never filed a reply to any of Petitioner's court filings and never denied the factual allegations of this case.

With DLM facing an increasing life-threatening situation, a request for an expedited and emergency review of the petition was requested by a separate filing on February 26, 1998.

On March 12th, the U.S. District Court issued an order and one page Memorandum denying the petition by labeling it as a matter of domestic relations and claiming this is outside of federal court jurisdiction. The court's order and Memorandum does not address the Constitutional violations

alleged. It gives only a string cite of three cases as the legal basis for its action. Further, the court incorrectly said that the petition sought "to challenge their sister's guardianship of their mother". The distant sister has never had, nor even sought, guardianship of DLM. She is far removed from her mother and has been most of her adult life. The factual error of this statement in the court's dismissal action was brought to the court's attention in petitioner's Motion for Reconsideration and for Extension of Time filed March 18th.

On April 6th, petitioner filed her 45-page Memorandum in support of Reconsideration. In it, petitioner distinguished in detail the facts and the law of each of the three cases relied on by the court (Memorandum filing, pgs. 7-14), and again addressed the error of the court's statement that the distant, out-of-state sister was guardian. The Constitutional violations conferring federal court jurisdiction by this wrongful civil confinement were also covered (Memorandum filing, pgs. 5-7; and pgs. 15-23; and pgs. 32-40). The violation of the "Least Restrictive Means" rule was raised with amply legal supporting authority cited. Also pointed out was the absence of any requisite compelling state interest to justify what is seen as a most grievous wrongful court intrusion into a private family's life (Memorandum, pgs. 32-44).

By order of April 14, 1998, the District Court denied petitioner's Motion for Reconsideration without discussing

any of the issues presented, and without correction of its misstated factual premise about the distant daughter having guardianship over DLM.

On April 10, 1998, petitioner filed her Notice of Appeal. Exh. 9. On September 4th, she was granted *In Forma Pauperis* status due to the wholesale takeover of all of her property and with it, the destruction of her rightful pride in her financial independence.

On September 10th, the U.S. Court of Appeals for the Fourth Circuit issued its order to proceed on Informal Briefs. Petitioner, on October 5th, filed her appellate brief in support of federal habeas corpus jurisdiction, and separately, submitted her Points and Authorities in support thereof.

On November 3, 1998, in an unpublished, one-paragraph decision, the appellate court affirmed the District Court's action without further comment.

REASONS FOR GRANTING THE WRIT

I. THE DISTRICT COURT'S RULING THAT IT DID NOT HAVE JURISDICTION BY LABELING THIS AS A "DOMESTIC RELATIONS" MATTER IS CONTRARY TO WELL-ESTABLISHED FEDERAL HABEAS CORPUS CASE LAW THAT PROTECTS THE FAMILY BOND AND INDIVIDUALS IN THEIR FREEDOM AND LIBERTY

A. The Federal Court Does Have Jurisdiction Over Matters Of Guardian Or Other Third Party Abuse That Violates Individual Rights

It is the guardian who is the "means" for insuring the individual's protection. When the guardian fails in that duty, the federal court will step in.

> "The (person's) right is not to get a guardian. It is to be free from unwarranted government intrusion. The guardian is merely a means for protecting that freedom".

Rogers, et al. vs. Orrin, M.D., et al., 478 F.Supp. 1342, 1362 (USDC, D. Mass., 1979, Tauro, J.) (federal court jurisdiction applied to correct a wrongful civil confinement).

Federal Jurisdiction Exists To Review This Very Type Of Habeas Corpus Claim

> "Among the state's many powers, none is more fearsome than the power to take a child away from a parent. Challenged exercises of this power deserve close judicial scrutiny."

Pfoltzer, et al. Vs. County of Fairfax, et al., 775 F. Supp. 874 (E.D. Va., Alex. Div., 1991).

A decision to interfere with the family relation implicates the constitutional rights of all members involved

in that it impacts on, aggrieves and affects, the makeup of that family. Pfoltzer, et al., *supra.*

It is the duty of the federal district court on a petition for habeas corpus to make an independent determination that due process had been observed in factual and legal support for the state adjudications. Whiteley vs. State of Wyoming, 293 F. Supp. 381, *affirmed* 416 F. 2d 36, *reversed on other grounds* 91 S. Ct. 1031, 401 U.S. 560, 28 L. Ed. 2d 306 (D.C. Wyo., 1968).

28 U.S.C. Section 2254 provides for swift, flexible and summary determination of an incarcerated person's claim. Preiser vs. Rodriguez, 93 S. Ct. 1827, 411 U.S. 475, 36 L. Ed. 2d 439 (N.Y. 1973). The writ of habeas corpus must be construed to afford swift and imperative remedy in all cases of illegal restraint or confinement, otherwise the writ is reduced to a sham. Jones vs. Shell, 572 F. 2d 1278 (C.A. 8th (Ark.), 1978). Where the procedure followed, or the state law applied, impugns fundamental fairness or infringes upon specific constitutional protections, habeas corpus relief will lie in federal court. Strader vs. Blalock, 405 F. Supp. 1155 (D.C. Va., 1975).

A habeas corpus petitioner meets statutory "in custody" requirements when, at the time she files her petition, she is in custody pursuant to an order that she attacks, or she is in custody pursuant to another order that is positively and demonstrably related to that which she

attacks. Carter vs. Procunier, 755 F. 2d 1126 (C.A. 5th (Tex.), 1985). "Custody" exists entitling petitioner to seek federal habeas corpus relief when there exists some sort of supervisory control over the person of petitioner in that her conduct is subject in one degree or another to the direction of a judicial officer, so to cause a restraint on her liberty. Whorley vs. Brilhart, 359 F. Supp. 539 (D. C. Va., 1973). The federal court is guided in federal habeas corpus cases by federal due process standards, not by state criteria. McKinney vs. Boles, 254 F. Supp. 433 (D.C. W. Va., 1966).

A federal writ of habeas corpus stands as a guaranty to every citizen that he will not be detained in violation of fundamental liberties. Ross vs. Wainwright, 451 F. 2d 298, *certiorari denied* 93 S. Ct. 98, 409 U.S. 884, 34 L. Ed. 2d 141 (C.A. Fla., 1971). Section 2254 authorizes use of federal writ of habeas corpus to challenge a confinement or imprisonment upon claims of disregard of the constitutional rights of the applicant. Hill vs. Rose, 579 F. Supp. 1080 (D. C. Tenn., 1983).

A habeas corpus proceeding in federal court is a civil action contesting the legality of restraint of petitioner's personal liberty. Questions of federal dimension arise when circumstances are presented which demonstrate fundamental unfairness of the trial or hearing, or raise the infringement of important constitutional rights. U.S. ex rel. Rush vs. Ziegele,

335 F. Supp. 434, *affirmed* 474 F. 2d 1356 (D. C. N. J., 1971).

B. Petitioner's Imprisonment Violates Well-Established Law

Two points must be established to support a confinement amounting to an imprisonment of DLM: (1) that this burden is "justified by a compelling state interest" and, (2) that any outside control over another's life is "closely tailored to further that interest." Hodgson et al. vs. Minnesota, et al., 497 U.S. 417, 455, 110 S. Ct. 2926, 2955, 111 L. Ed. 2d 344 (1990) (Marshall, J., Brennan, J., and Blackmun, J., concurring opinion). The law protects the controlled person in such a situation by demanding specific justification for any control forcibly exerted by another over that person. Parham v. J.R., 442 U.S. 584, at 604-608, 99 S. Ct. 2493, at 2505-2507, 61 l. Ed. 2d 101 (1979).

The law is clear: No individual conduct, statute or court order imposing limitations on the person and property of another can be constitutionally sustained "if the obstacles it imposes are not reasonably related to legitimate state interests." Doe v. Bolton, 410 U.S. 179, 194-195, 199, 93 S. Ct. 739, 748-749, 751, 35 L. Ed. 2d 201 (1973). In the absence of this showing, a state's action cannot be sustained. Turner v. Safley, 482 U.S. at 97, 107 S. Ct., at 2266, 96 L. Ed. 2d 64 (1987).

No interest has ever been claimed in this Habeas case by respondent. The fact is there is none, and respondent chose not to reply at all rather than have to face the impossibility of justifying his unjustifiable and egregious conduct towards another human being.

This record shows that DLM is being held pursuant to a state court order that essentially gave a blank check to respondent without any oversight to his conduct. But for that court order of appointment, DLM would not be imprisoned. So the District Court's suggestion that this makes DLM "not in the custody of the state" and thus not subject to federal habeas corpus review is also factually incorrect (District Court's one page Memorandum of March 12, 1998, Exh.2-B). Fact is, it is solely because of that state action that DLM – who has harmed no one and sought only to continue living in the peace of her home with her family and nighbors – suffers a civil imprisonment that is totally void of any legal justification, and under the most inhumane conditions as well. In sum, there is no "legitimate state interest", and none has been asserted, that justifies DLM's imprisonment and family separation a day longer.

C. The Record Lacks The Required Showing That Actions Of Control Over DLM "Are Closely Tailored" To Further Any Purpose Other Than The Respondent's Own Financial Gain

Any legal confinement of DLM was required to have been narrowly tailored to meet a legitimate interest. In

Planned Parenthood of Central Missouri vs. Danforth, . 428 U.S. at 90-91, 96 S. Ct., at 2850-2851, 49 L. Ed. 2d 844 (1976), the Court stated that the "...constitutional deficiency lies in the absolute limitation" of another person's established rights. The Court has approved efforts that "carve out" or "tailor" a restriction to meet a legitimate state interest. See, e.g., Bellotti v. Baird, 428 U.S. 132, 147-148, 96 S. Ct. 2857, 2866-2867, 49 L. Ed. 2d 788 (1976) [in considering a less restrictive tailored approach]. But that is not the case here.

The ease with which "less burdensome means" can be adopted to protect another's genuine interests is a factor in determining whether actions complained of are Constitutional. Clark v. Jeter, 486 U.S. 456, 464, 108 S. Ct. 1910, 1915-1916, 100 L. Ed. 2d 465 (1988); Turner v. Safley, 482 U.S., at 98, 107 S. Ct., at 2266.

In summary, the imprisonment of DLM and all its adverse ramifications can further no legitimate state goal, and none has been asserted. No attempt, much less actual identification, of a "tailored" legitimate interest...a "carved out" approach...so to limit any unnecessary control, has ever been made. Accordingly, there can be no question that this family's fundamental rights have been violated. Respondent's conduct does "not pass the strict scrutiny applicable to (the) restrictions on a ...fundamental right...". Hodgson, *supra*, 497 U.S. at 461, 110 S. Ct. at 2951.

D. The Federal Court Protects Deprivation Of Liberty By False Imprisonment

In the Fourth Circuit, Collins vs. Straight, Inc, 748 F.2d 916 (4th Cir., 1984; E.D. Va., 1983) presented Constitutional issues and federal court jurisdiction arising from the forced confinement of an adult, and the prevention of the person from returning to their own home. Collins bears a close analogy to the present case. Collins addressed the wrongful civil confinement of an adult in a facility against their will (just like DLM). In finding for plaintiff, the Court rejected third party "best interests" arguments by the defendant. The federal court also rejected a requested defense jury instruction as to the "reasonableness" of the confinement (affirmed on appeal). Said the Fourth Circuit: Any argument of reasonableness is irrelevant. It is sufficient that the imprisonment was done against the adult's will.

E. The Right To Liberty Under The Due Process Clause Generally Precludes An Outsider From Substituting Its Decision In Place Of That Which Belongs To A Family

A family's right is to care for one another, both parent and child regardless of age. This right has been particularly affirmed against state interference (wrongful intrusion) in family matters. Prince v. Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438, 442, 88 L. Ed. 645 (1944) (Supreme Court decisions "have respected the private realm of family life which the state cannot enter"). See also,

Wisconsin v. Yoder, 406 U.S. 205, 232, 92 S. Ct. 1526, 1538, 32 L. Ed. 2d 15 (1972); Pierce v. Society of Sisters, 268 U.S. 510, 534-535, 45 S. Ct. 571, 573-574, 69 L. Ed. 1070 (1925).

DLM's personal decisions all constitute her right to Liberty and components thereof (its penumbras); decisions such as where and how to live, and with whom she chooses to associate; to make choices affecting her own person, her right to possess and enjoy her property. These can be summarized by DLM's right to plan and follow, in her own way, her pursuit of life, liberty and happiness. This right to Liberty is protected by the Due Process Clause of the Fourteenth Amendment to the Constitution. Cleveland Bd. Of Education v. LaFleur, 414 U.S. 632, 639-640, 94 S. Ct. 791, 796, 39 L. Ed. 2d 52 (1974). This Clause protects an individual's right to make such decisions independently and privately, free of unwarranted governmental intrusion. Eisenstadt vs. Baird, 405 U.S. 438, 453, 92 S. Ct. 1029, 1038, 31 L. Ed. 2d 349 (1972).

F. Federal Jurisdiction Exists On The Constitutional Issue Of Privacy That Was Presented As One Basis For The Habeas Corpus Relief

Within the family, there is a privacy familial interest which is protected by the Constitution against undue state interference. See, Wisconsin v. Yoder, 406 U.S. 205, 233-234, 92 S. Ct. 1526, 1537, 32 L. Ed. 2d 15 (1972); Roberts v.

United States Jaycees, 468 U.S. 609, 618-620, 104 S. Ct. 3244, 3249-3250, 82 L. Ed. 2d 462 (1984).

The Law of this land has long held that there exists a "private realm of family life which the state cannot enter." Prince v. Massachusetts, 321 U.S., at 166, 64 S. Ct., at 442. Thus, when the government intrudes on choices concerning the arrangement of the household, the U.S. Supreme Court has carefully examined the "governmental interests advanced and the extent to which they are served by the challenged regulation." Moore v. East Cleveland, 431 U.S. 494, 499, 97 S. Ct. 1932, 1935, 52 L. Ed. 2d 531 (1977) (plurality opinion); see also, Meyer v. Nebraska, 262 U.S. 390, 399-400, 43 S. Ct. 625, 626-627, 67 L. Ed. 1042 (1923).

Therefore, the parent's natural biological children who have demonstrated that level of commitment to his or her parent, and the parent who has acted in kind, are entitled to freedom from government intrusion to live their family life in autonomy, free of state interference.

G. The Familial Rights Violation Confers Federal Court Jurisdiction

The Familial Right of petitioner, "into which no government should intrude", is a fundamental Liberty that invokes the Court's "strict scrutiny". The "sanctity" of the parent-child bond is not affected by the age of those committed to that bond. Poe v. Ullman, 367 U.S. 497, 81 S. Ct. 1752, 6 L. Ed. 2d 989 (1961).

When such procedural as well as substantive obstacles are imposed against DLM, they burden her and her family's ability to freely exercise their Familial Constitutional rights. The constitutionally protected Familial Rights apply to both parent and children in the family unit, and are jointly and individually enforceable.

> "The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed "essential", Meyer v. Nebraska, 262 U.S. 390, 399 [43 S. Ct. 625, 626, 67 L. Ed. 1042] (1923).
>
> The child-parent relation is one of the "basic civil rights of man". Skinner v. Oklahoma, 316 U.S. 535, 541 [62 S. Ct. 1110, 1113, 86 L. Ed. 1655] (1942).
>
> The child-parent bond is guarded by "[r]ights far more precious...than property rights". May v. Anderson, 345 U.S. 528, 533 [73 S. Ct. 840, 843, 97 L. Ed. 1221], (1953).
>
> "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom

include preparation for obligations the state can neither supply nor hinder." Prince v. Massachusetts, 321 U.S. 158, 166 [64 S. Ct. 438, 442, 88 L. Ed. 645], (1944).

In addition to the explicit, constitutionally protected Familiar Right violation that is implicated, the integrity of the family unit has also found protection in the Due Process Clause of the Fourteenth Amendment, Meyer v. Nebraska, *supra,* 262 U.S. at 399, 43 S. Ct. at 626; in the Equal Protection Clause of the Fourteenth Amendment, Skinner v. Oklahoma, *supra,* 316 U.S. at 541, 62 S. Ct. at 1113; and in the Ninth Amendment, Griswold v. Connecticut, 381 U.S. 479, 496; 85 S. Ct. 1678, 1688; 14 L. Ed. 2d 510 (1965) (Goldberg, J. concurring).

H. The Serious Liberty Violations Alleged Supported Federal Court Jurisdiction

The Liberty interest at issue is not only that of DLM, but also that of her family who have chosen to seize that opportunity to be with her. As the Court stated in Pierce v. Society of Sisters, 268 U.S. 510, 535, 45 S. Ct. 571, 573, 69 L. Ed. 1070 (1925), the fact of a direct biological family relation merely offers those family members "an opportunity...to develop a (committed) relationship". For those family members who value this committed family relation and choose to nourish it, the demonstration of this

commitment gives a Liberty interest. The law requires that when outsiders threaten this interest, the Court's "strict scrutiny" standard is invoked to protect each individual's Liberty interest in their "sacred" familial relation. The Court has so stated for purposes of this case by analogy to the constitutionally protected Liberty interest a parent acquires in the relationship with its child:

> The demonstration of commitment to the child through the assumption of a personal, financial or custodial responsibility may give the natural parent a stake in the relationship with the child rising to the level of a Liberty interest. See Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212, 31 L. Ed. 2d 551 (1972). Lehr v. Robertson, 463 U.S. 248, 261, 103 S. Ct. 2985, 2993, 77 L. Ed. 2d 614 (1983).

This same type of commitment and resulting Liberty interest equally applies...indeed, more so...between adult children with their adult parents (where the law does not mandate such a commitment as it does in a parent-minor child relation). Each has an enforceable Liberty interest in that familial relation.

I. Property Taken Without A Hearing Raises Constitutional Issues Within The Jurisdiction Of The Federal Court

> "Certainly the safeguarding of the home does not follow merely from the sanctity of property rights. The home derives its pre-eminence as the seat of family life. And the integrity of that life is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted Constitutional right."

Poe v. Ullman, 367 U.S. 497, 551-552, 81 S. Ct. 1752, 1781, 6 L. Ed. 2d 989 (1961) (Harlan, J., dissenting).

J. Grave Forewarnings Have Been Made By Concerned Groups About Outsider Control Where Confinement Is Brought About By Third-Party Indifference And Pursuit of Their Own Financial Gain

The *American Bar Association* and others have warned of the severe Constitutional violations inherent in the use of guardianship, or lack of close oversight by the court. "Guardianship should be viewed as a measure of last resort. Thus, there shuld be sufficient available alternatives so that guardianship will be used only in those cases in which it clearly benefits thel ward." Alternatives "to suport

independence in the home" should be applied. "These alternatives should be explored first, and guardianship and/or instiltutionalization should be relied on only as a last resort to provide needed services." 2/

II. The Three Cases Relied On By The District Court As The Sole Legal Basis Cited For Its Dismissal Do Not Provide Precedent For The Dismissal On A Claimed Lack Of Federal Court Jurisdiction

Lehman et al. vs. Lycoming County Children's Services Agency, 458 U.S. 502 (1982), cited by the District Court in support of its dismissal, involves the involuntary termination of parental rights by a mother over her three sons (ages 18, 16 and 12). This was after she had voluntarily placed them in foster homes. It bears no analogy to the present case.

In re Burris, the second case relied on by the District Court to support its dismissal on jurisdictional grounds, is an 1889 Supreme Court case that deals with a dispute over a child's father and its grandfather over which could provide the better custody for the child. The decision explicitely finds that there had been no restraint of the child's liberty and no withholding of the child from the careand enjoyment of its family. This case too has no analogy to the present case.

2/ From the *American Bar Association's* "Agenda for Reform" (1989) at pages 3-4 (The ABA's critical look at guardianship, and its urging for the use of other alternatives)

Hemon et al. v. Office Of Public Guardian, 878 F. 2d 13 (1st Cir. 1989) deals with a fact situation in which there is uncertainty as to where an adult wants to live. Also, it deals with the question of whether one family member or another is better suited to provide needed care... not whether a stranger can imprisonment a family member away from their family and home community.

Thus, the three cases relied on clearly do not provide proper analogies, or valid legal precedent, for the court's dismissal of the present Habeas petition.

CONCLUSION

The petition for a writ of certiorari should be granted. This case is appropriate for Summary Reversal, rather than remand, given the uncontested facts, the clarity of the law on such a wholesale take over of a person's entire person and property without the person, or her POA, being allowed to atttend and participate in the hearing, and the lack of any response by respondent throughout the case.

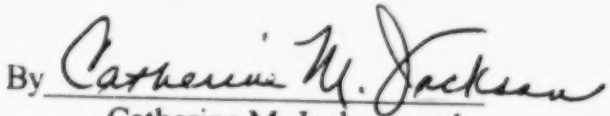
Petitioner moves that the Court consider and decide the entire matter of the Habeas petition. 28 U.S.C. 1254(2). The Court should enter Summary Reversal and grant the petition for the writ of habeas corpus. This is necessary to free petitioner from this unlawful and barbaric confinement. *Time is short.* Without this relief, this imprisonment will

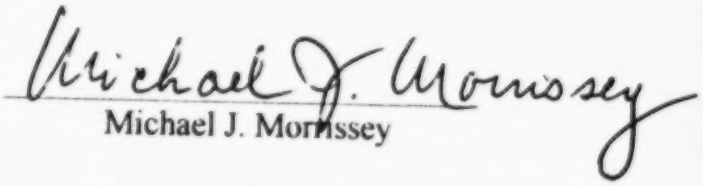
take petitioner's life in the midst of her despair due to this most cruel, unjustified, and excruciating painful suffering that is being forced on her by respondent, a stranger to her.

Wherefore, Petitioner prays that her Petition for Writ of Certiorari, and the Summary Entry of her Habeas Corpus relief, be Granted.

Respectfully submitted,

DOROTHY L. MORRISSEY

By 
Catherine M. Jackson and


Michael J. Morrissey

Adult children of, and next-of-friends to, Dorothy L. Morrissey.

7910 Topaz Road
Richmond, Va. 23228
(804) 266-6093

APPENDIX

APPENDIX

APPENDIX EXHIBIT #1

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-1550

MICHAEL J. MORRISSEY; CATHERINE M. JACKSON,

Petitioners - Appellants,

versus

GREER JACKSON,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, District Judge. (CA-98-87)

Submitted: October 20, 1998 Decided: November 3, 1998

Affirmed by unpublished per curiam opinion.

Before WILKINS and HAMILTON, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Michael J. Morrissey, Catherine M. Jackson, Appellants Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Michael Morrissey and Catherine M. Jackson appeal the district court's order denying relief on a petition filed on behalf of a third party under 28 U.S.C.A. section 2254 (West 1994 & Supp. 1998). we have reviewed teh record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Morrissey v. Jackson, No. CA-98-87 (E. D. Va. Mar. 12, 1998). We dispense with oral argument because the facts and legal contention are adequately presented in the

materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX EXHIBIT #2-A

IN THE UNITED STATES DISTRIT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

CATHERINE M. JACKSON AND
MICHAEL J. MORRISSEY

Petitioners,

v. Civil Action 3:98CV87

GREER JACKSON,

Respondent.

ORDER

In accordance with the accompanying Memorandum, it is ORDERED that the action is DISMISSED WITHOUT PREJUDICE.

The Petitioners may appeal the decision of the Court. Should the Petitioners wish to do so, written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to do so may result in the loss of the right of appeal.

Let the Clerk send a copy of the Order and accompanying Memorandum to the Petitioners.

And it is so ORDERED.

/s/ James R. Spencer

UNITED STATES DISTRICT JUDGE

Richmond, Virginia

Dated: March 12, 1998

APPENDIX EXHIBIT #2-B

IN THE UNITED STATES DISTRIT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

CATHERINE M. JACKSON AND
MICHAEL J. MORRISSEY

Petitioners,

v. Civil Action 3:98CV87

GREER JACKSON,

Respondent.

MEMORANDUM

Catherine M. Jackson and Michael J. Morrissey ("Petitioners"), submitted a document labeled "application for a writ of habeas corpus." Petitioners allege that their mother "DLM" is "unlawfully detained of her liberty by respondent Greer Jackson, and is now in the custody of the said Greer Jackson at a place in the far West End of Henrico County, known as "Bethany Healthplex." Apparently, the Petitioners seek to invoke this Court's jurisdiction under 28 U.S.C. section 2254 to challenge their sister's guardianship of their mother.

Federal habeas corpus jurisdiction does not extend to state court disputes over parental or child custody, particularly when the individual is not in the custody of the state. Lehman v. Lycoming County Children's Services Agency, 458 U.S. 502, 511 (1982) (child custody); Hemmon v. Office of Public Guardian, 878 F. 2d 13, 15 (1st Cir. 1989 (parental custody). See, In re Burrus, 136 U.S. 586, 593-94 (1890) ("The whole subject of the domestic relations of a husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States."). The action will be dismissed.

An appropriate Order shall issue.

/s/ James R. Spencer

UNITED STATES DISTRICT JUDGE

Dated: MAR 12 1998

APPENDIX EXHIBIT #3

IN THE UNITED STATES DISTRIT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

CATHERINE M. JACKSON and MICHAEL J. MORRISSEY, For themselves and on behalf of DLM Petitioners. v. GREER JACKSON, Respondent.	Civil Action 3:98CV87

ORDER

THIS MATTER came before the Court on Petitioners' Motion for reconsideration. Upon due consideration, the Court hereby DENIES Petitioners' motion. Petitioners' Motion for Stay is MOOT. The Court's March 12, 1998 Order shall remain in full force and effect.

Let the Clerk send a copy of this Order to all counsel of record.

And it is SO ORDERED.

APPENDIX EXHIBIT #3

/s/ James R. Spencer

UNITED STATES DISTRICT JUDGE

April 14, 1998

DATE

APPENDIX EXHIBIT #4

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

IN RE: Michael J. Morrissey, Agent of Dorothy Lux Morrissey, under a Power of Attorney or otherwise

Case No.: CH97000742-00

CERTIFICATION PURSUANT TO SECTION 37.1-133.1

Comes now Edwin A. Bischoff, Guardian Ad Litem, appointed herein for Dorothy Lux Morrissey, and certifies to the Court that at a personal meeting with Dorothy Lux Morrissey on May 30, 1997, Dorothy Lux Morrissey was advised of the following rights:

1. To be present at the hearing and all of the stages of this proceeding;

2. To compel the attendance of witnesses at the hearing;

3. To present evidence in her own behalf; and

4. To confront and examine all witnesses providing evidence, including persons who prepared

any comprehensive evaluation of the alleged inompetent or incapacitated person.

/ s /
Edwin A. Bischoff, guardian Ad Litem
8500 Mayland Drive
Richmond, Virginia 23294

I hereby certify that a true and exact copy of the foregoing Certificate was mailed, postage prepaid, to R. Shawn Majette, Esquire, P.O. Box 766, Richmond, Virginia, 23218, Michael J. Morrissey, 2112 Oakwood Lane, Richmond, Virginia, 23228, and to Peter Mellette, Esquire, P.O. Box 1474, Richmond, Virginia 23212, this 16th day of June, 1997.

(Note that: on the original, the date was handwritten in, and the month was typed as "April" which was scratched through in handwriting, and "June" handwritten above it, initialed by "EB")

/ s /
Edwin A. Bischoff

APPENDIX EXHIBIT #5















APPENDIX EXHIBIT #6-A

From page 506, lines 17-21, of the official court transcript of the hearing held on June 23, 1997 in the Henrico County Circuit Court, Judge L. A. Harris, on June 23, 1997.

* * *

THE COURT: Again, I think a lot of this is really mistargeted. No one has asked me, you know, to say this lady cannot stay at home, that this lady's going to a nursing home or what have you. That is not the issue here.

* * *

APPENDIX EXHIBIT #6-B

From page 517, lines 22-24, and page 518, lines 1-3, of the official court transcript of the hearing held on June 23, 1997 in the Henrico County Circuit Court, Judge L. A. Harris, on June 23, 1997.

* * *

THE COURT: * * * Again, I don't think that anyone should get the understanding of what is happening here today is someone's saying all the while, Ms. Morrissey, you're not going to be in your home, you're going to a nursing home or that type thing. That is not the situation.

* * *

APPENDIX EXHIBIT #7

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
- At Richmond -

CATHERINE M. JACKSON 7910 Topaz Road Richmond, Va. 23228 and MICHAEL J. MORRISSEY 7910 Topaz Road Richmond, Va. 23228 Petitioners vs GREER JACKSON 8550 Mayland Drive Richmond, Va. 23914 Respondent	)	No. 3:98CV87 Petition for Writ of Habeas Corpus

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In the Matter of the Application

of DLM for a Writ of Habeas Corpus

To the Honorable United States District Court for the Eastern District of Virginia, at Richmond:

The petition of DLM respectfully shows:

1. DLM, by her daughter and son as her next of friends living here in Richmond, makes application herein for a writ of habeas corpus in that she is unlawfully detained and restrained of her liberty by respondent Greer Jackson, and is now in the custody of the said Greer Jackson at a place in the far West End of Henrico County, known as Bethany Healthplex.

2. Petitioners, by her daughter Catherine Jackson and by her son Michael Morrissey ("petitioners"), make application herein on behalf of DLM, for a writ of habeas corpus in that said DLM is unlawfully detained and restrained of her liberty by respondent Greer Jackson, and is now in the custody of the said Greer Jackson at a place in the far West End of Henrico County, known as Bethany Healthplex.

3. The cause or pretext of such detention and restraint is

that the "guardian" of DLM says this is for her "best interests", or for her "safety". Respondent says little more than that, and operates in general secrecy. The respondent was appointed guardian over DLM, over the objection of her attorney and in her absence. Respondent was then and still is a complete stranger to DLM He knows little about her, and nothing about her vivacious personality, her dreams, wishes, desires, preferences and lifestyle.

A hearing was held against DLM on June 23, 1997, at a time when she was recovering from hip replacement surgery and still under the effects of anesthesia at Chippenham hospital. She did not even know the hearing was taking place, and DLM had never waived her right to be present and participate at that hearing. DLM's two local children living close to her here in Richmond also strongly objected to this guardianship appointment.

The guardian has abused his position and has abused DLM from the start. There is no court, medical or other authority that has ordered DLM away from her home. In

fact, the court ruled just the opposite, that she IS to continue living in her home. The guardian alone is responsible for falsely imprisoning her. He is indifferent to her wishes. He has said that "what she wants doesn't really matter now". DLM's foremost wish as a legally competent adult is to live her life as she chooses and with her privacy protected. Her foremost desire is to return to her home of 30+ years here in Richmond and be with her children.

4. Said detention and restraint is unlawful and constitutes a wrongful imprisonment of DLM by respondent, in that:

(1) It is against all of DLM's so-called "best interests". Her extremely rapid decline and disregard towards her of any human dignity and respect is glaring since she has been under this guardian's "control". It is against any notion of "safety". DLM is continually subjected to unsafe conditions, physically, medially, mentally and emotionally. The guardian's easy resort to such rhetoric is motivated by his own self-serving agenda for financial

gain at DLM's expense. The principle of *Res ipsa loquitur* applies. Those who know and love DLM have only to look at her to see how much she has been neglected, and now it has advanced to extreme abuse, with devastating consequences. "Heartwrenching" is how one friend recently put it.

(2) It violates the Henrico Circuit court's ruling that DLM is to return to her home and continue living there. When confronted about this contempt of the court's ruling, respondent's reply was, "well, I didn't know about that".

(3) It violates DLM's own wishes which are to be the most important in decisions about her life, especially where she is to live.

(4) It violates her individual rights. (a) It violates her right to Liberty; (b) to Privacy; (c) it violates her Familial Rights, i.e. her right to the care and maintenance of the family unit; (d) it violates her right to Freedom of Association, in this instance to associate, confide, and

live with the familiarity, companionship and love of her two children who she has heretofore been with on close to a daily basis. It violates her right of association with her neighbors, her friends and her close church members. (e) It violates her right to Freedom of Religion. DLM's religion has always been a central part of her life. Her attendance at church, and her closeness with the nuns and priests is most important to her. Her receiving of Holy Communion, and attending services, is the spirituality that has been so much a part of her. She has been denied all this. (f) It violates her right to Due Process. DLM was not even present at the hearing at which her life was taken from her. Now she is denied, solely due to the guardian's conduct, her own home, without any hearing having been held on the issue of taking that from her. Her right to Liberty and her pursuit of happiness...to her own autonomy...have all been stripped from her without any Notice.

(5) DLM's present imprisonment also constitutes cruel

and unusual punishment. She is forced into isolation, loneliness, physical pain and mental agony. She has been placed in a "ward" of severe mental incompetents. Her safety is jeopardized. Without any staff personnel in sight, deranged persons are able to approach her physically. One such person wearing a football helmet approached her with verbal noises that were frightening and unrecognizable. A family member was there at the time to prevent any altercation.

Use of her legs has been taken from her due to the guardian's failure to provide her with the physical therapy that everyone needs after a hip replacement surgery. Her right arm became useless, without any attention to it from the guardian. She has suffered numerous falls, due to lack of sufficient attention. Her mental anxiety is readily apparent on her face, in place of the smile, laughter and love that she knew in her own home.

The place she is presently imprisoned at is notoriously understaffed. She suffers from malnourishment, both in terms of insufficient food and inadequate liquids. She has, and is especially now, suffering enormous physical, mental and emotional pain. The guardian has ruined her in this regard, while he has also has greatly depleted her assets.

(6) Further, the guardian has placed a "gag order" on anyone telling the children about their mother. A recent "care planning" meeting was held at which the family is generally welcomed and encouraged to attended under the facility's policy and practice. Yet, respondent prohibited the children from attending. He has barred any of the facility personnel from telling the children anything about the care and condition of their mother.

(7) DLM's life is now in danger from this abuse. This is a matter of the utmost urgency. Time-is-of-the-

essence is seeing to it that DLM's fundamental rights are protected, and that she is able to continue living.

5. DLM has no other adequate remedies. Her appeal is pending at the Virginia Supreme Court, but that is such a slow process that even in the event of a most favorable result, no remedy would be realized until probably in the Fall of 1998. DLM will not survive that long if she is left in this environment so hostile to her. Motions for an expedited review on this was denied.

6. No other application for this writ has heretofore been made to any other court or judge.

WHEREFORE, petitioners pray that a writ of habeas corpus issue herein directed to the said Greer Jackson, commanding him to appear before this Court at a time and date to be specified in said writ, and to show cause if he can, as to the justification and legality of DLM's detention, and

that DLM be ordered discharged from the detention and restraint aforesaid.

CATHERINE M. JACKSON

/ s /
Catherine M. Jackson

7910 Topaz Road
Richmond, Va. 23228
(804) 266-6093

MICHAEL J. MORRISSEY

/ s /
Michael J. Morrissey

7910 Topaz Road
Richmond, Va. 23228
(804) 266-6093

APPENDIX EXHIBIT #8

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
- At Richmond -

DOROTHY L. MORRISSEY, CATHERINE M. JACKSON, and MICHAEL J. MORRISSEY Plaintiffs	)	
vs	)	Civil Action No. 3:98CV87
GREER JACKSON Defendant	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR ISSUANCE OF A TEMPORARY RESTRAINING ORDER

In further support of plaintiffs' motion for entry of a Temporary Restraining Order against the defendant, the following points and authorities, and discussion, is submitted.

INJUNCTIVE POWER OF THIS COURT

An Injunction will issue where complainant's civil rights have been evaded. Brown vs. J.C. Penny Co., D.C.Wyo. 1943, 54 F.Supp. 488. An injunction will issue to protect and preserve basic civil rights. Clemons vs. Board of Ed. Of Hillsboro, Ohio, C.A.Ohio 1956, 228 F.2d 853, certiorari denied 76 S.Ct 651, 350 U.S.1006, 100 L.Ed 868.

The federal courts have the fundamental power and duty to protect individual rights. This is especially so against an unlawful and unauthorized use of power. This protection may be by means of an injunction requiring affirmative action on the part of a defendant, particularly where the right is a constitutional one. Lester vs. Parker, C.A.Cal.1956, 235 F.2d 787, rehearing denied 237 F.2d 698.

Violations of constitutional rights, such as of the First Amendment, constitute *per se* irreparable injury, for temporary restraining order purposes, even where impairment exists only for a minimal period of time. Doe by Doe vs. Shenandoah County School Bd., W.D.Va. 1990, 737 F.Supp. 913.

An activity which will endanger human life may be enjoined on the ground that a court of equity will not gamble with human life, at whatever odds. For loss of life, there is no remedy that is, in an equitable sense, adequate. Harris Stanley Coal & Land Co. vs. Chesapeake & O. Ry. Co., C.C.A.Ky.1946, 154 F.2d 450, certiorari denied 67 S.Ct. 111, 329 U.S. 761, 91 L.Ed.656.

A District Court has the power to issue an injunction to prevent an injury to any constitutionally protected right, such as the right of privacy. Nixon vs. Sampson, D.C.D.C. 1975, 389 F.Supp. 107, dismissed 437 F.Supp. 654, reversed on other grounds 591 F.2d 944, 192 U.S.App.D.C. 335.

Federal courts have power to enjoin harassment or repeated invasions of privacy. Lewis vs. S.S.Baune, C.A.La.1976, 534 F.2d 1115, rehearing denied 545 F.2d 1299.

As to unconstitutional interference with real property rights, the federal court has held that tenants were entitled to

a preliminary injunction so to restrain the landlord from enforcing a seizure and sale of property without prior notice and hearing to its owner. Adams vs. Joseph F. Sanson Inv. Co., D.C.Nev.1974, 376 F.Supp 61. A Temporary restraining order is generally issued *ex parte* or after a hearing of summary character. Dilworth vs. Riner, C.A.Miss.1965, 343 F.2d 226.

A TRO without notice can issue for the purpose of preserving the status quo and preventing irreparable harm. Warner Bros. Inc. vs. Dae Rim Trading, Inc., C.A.2(N.Y.) 1989, 877 F.2d 1120.

The Guardian's Conduct Violates DLM's Right To Liberty And Her Pursuit Of Happiness

Individual constitutional rights, guaranteed to every citizen by the Federal and State constitutions, represent a value judgment that unjustified search and seizure, deprivation of Liberty which encompasses one's right to the enjoyment of life, unlawful invasions of privacy, and

malicious interference with the familial bond, are such fundamental law that when conduct of anyone so greatly threatens these individual liberties, it must be forever condemned as a matter of constitutional principle.

> "The makers of our constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations (and associations). They conferred, as against the Government, the right to be let alone -- the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, by whatever the means employed, must be deemed a violation of the Fourth Amendment."

Olmstead vs. United States, 277 US 438, 478, 72 L. Ed 2d 944, 48 S. Ct 564 (1928)[Brandeis, J., dissenting].

The continued, forced confinement of Dorothy L. Morrissey (DLM) against her will, when she has the approval of her orthopedic surgeon for her return to her

home, represents both Federal and State Constitutional violations of Privacy and her Right of Liberty. It also deprives DLM of her personal property. Due Process under the Fourteenth Amendment mandates her right to be heard, something that in the guardian's flawed thinking, says "doesn't really matter at this point" (paraphrasing).

The deprivation continuing each day now against DLM from her home, from her right to associate with others of her choosing, and from access to her property with the privacy she is entitled to, implicates those very "fundamental liberty interests" that were delineated (and upheld) in Roe vs. Wade, 410 US 113, 35 L. Ed 2d 147, 93 S. Ct 705 (1973).

It is well-settled that once a State creates such a constitutionally protected interest, the Constitution forbids it from depriving one of that interest arbitrarily. This rule applies to all citizens, the poor and the rich, the free and the imprisoned, the young and the old, without distinction. Hewitt vs. Helms, 459 US 460, 469-472, 74 L. Ed 2d 675, 103 S. Ct. 864 (1983).

The Guardian's Conduct Violates The Judicially Enforced Sanctity of The Family

Among the relationships that this country's highest Court has shielded from state interference is the bond between parents and their children. See, Wisconsin vs. Yoder, 406 US 205, 32 L. Ed 2d 15, 92 S.Ct 1526 (1972); also, Stanley vs. Illinois, 405 US 645, 31 L.Ed 2d 551, 92 S. Ct 1208 (1972).

DLM's continued incarceration at the rehabilitation facility divorces her from her immediate family and loved ones. A family relation receives the heightened Constitutional protection, and invokes this Court's "close scrutiny". As applied in an analogous prison context, one Federal Judge has said that "[T]he ability of a man to embrace his wife and his children from time to time during the weeks or months while he is awaiting trial, is a matter of great importance to him". Denial of family contact in ANY context drives a wedge in a relationship that is at the core of

our society. Such a denial is "very traumatic treatment". Cited in Block vs. Rutherford, 82 L.Ed 2d 438.

The imposition of *limiting restrictions* can be equivalent to the denial of any contact between the parent and child. See, e.g., Boudin vs. Thomas, 533 F. Supp 786, 792-793 (SDNY, 1982) [on the parent-child relationship]. Keeping her in an institution, after she is approved to leave and does not need to be there, constitutes such a *limiting restriction*.

The Supreme Court has made clear its mandate on the legal sanctity of family bonds:

> "Our cases leave no doubt that a person's freedom to enter into, maintain, and cultivate familial relations is entitled to constitutional protection".

Santosky vs. Kramer, 455 US 745, 753, 71 L.Ed 2d 599, 102 S.Ct 1388 (1982).

The Court-established special status of this relationship in our constitutional scheme derives from the fact that (1) traditionally it has been regarded *as sacrosanct*.

Bellotti vs. Baird, 443 US 622, 638, 61 L.Ed 2d 797, 99 S.Ct 3035 (1979); Meyer vs. Nebraska, 262 US 390, 402, 67 L. Ed 1042, 43 S. Ct 625 (1923).

Furthermore, the highest Court has (2), held the family bond to be central to the emotional life of many persons. See, Smith vs. Organization of Foster Families, 431 US 816, 844, 53 L. Ed 2d 14, 97 S.Ct 1932 (1977); and, Pierce vs. Society of Sisters, 268 US 510, 535, 69 L. Ed 1070, 45 S.Ct 571 (1925).

Thus, a most compelling government interest, and a very important public purpose, is required to sustain any action that goes to sever, or even just adversely interfere with, the family relation. Even incarcerated criminals retain these important constitutional rights. Lee vs. Washington, 390 US 333, 19 L.Ed 2d 1212, 88 S.Ct 994 (1968)[equal protection of the laws]. Surely an innocent person, regardless of age, is entitled to no less. There is no iron curtain drawn between the Constitution and the senior

citizens of this country. Wolff vs. McDonnell, 418 US 539, 41 L. Ed 2d 935, 94 S. Ct 2963 (1974).

The courts have insisted upon very persuasive justifications for conduct that interferes with the parent-child relation. This is even so for government regulations that significantly, even though not prohibitively, interfere with the free exercise of familial rights. Cleveland Board of Education vs. LaFleur, 414 US 632, 640, 39 L. Ed 2d 52, 94 S.Ct 791 (1974) [invalidating an administration regulation that was found to impose a "heavy burden" on family rights]. A similar stringent test should be given meaningful application here against the solitude, isolation, imprisonment. lack of privacy and deprivation of her property, that continues to be forced against DLM here, and the exclusion of her children it causes from them being able to be with her daily.

At a minimum, the person responsible for any of these restrictions is required to show, with fact specifics, that

the violations advance a substantial government interest. This the guardian has not only never done, but he has refused to answer when the questions were asked.

With DLM now having been medically determined not to require skilled care for her hip replacement recovery, yet her being still detained in the rehabilitation facility against her will and at a cost to her of $90+ a day (as she lives on her retirement income), any party against her can not, and has not, made such a showing of substantial government interest to compel what amounts to, her continued incarceration.

Furthermore, the continued confinement of DLM to this condition amounts to the imposition of such limiting conditions so as to be equivalent to denying her from her family and from daily seeing and associating with those who have been so much a part of her life. This has gotten to the point of being nothing less than punitive and malicious conduct towards DLM by the guardian. Jackson has acted with a reckless disregard of her rights or her health. It is this

sacrosanct relationship that goes to the heart of mental health. See, Bellotti vs. Baird, *supra*, and the other U.S. Supreme Court cases cited above.

The Guardian's Statement That "DLM's Wishes Don't Matter Now" Confirms His Violation Of DLM's Due Process Rights

Jackson disregards DLM's wishes, believing they "don't matter". He denied DLM's participation in what is her own decision making. She would be furious if she knew that Jackson was vacating her house and taking control of her possessions (there is no oversight...no protection to her...in allowing this type person unfettered access to her property). DLM is being denied due process in being heard from on matters that greatly affect her. One of the purposes of the Due Process Clause is to reduce the incidence of error in deprivations of life, liberty, or property. See, Fuentes vs. Shevin, 407 US 67, 80-81, 32 L. Ed 2d 556, 92 S. Ct 1983 (1972).

The Courts mandate against Jackson's shunning of DLM's preferences, as it has been stated that one of ways such error can be reduced is, in turn, by allowing persons whose interests may be adversely affected by decisions that affect them, to participate in those decisions. Mathews vs. Eldridge, 424 US 319, 47 L. Ed 2d 18, 96 S. Ct 893 (1976).

In Jackson's mind — and only his — DLM's wishes "don't matter"...a mindset the trial judge never anticipated. Jackson routinely denies DLM's participation in what is her own decision making. DLM is being denied due process by not being heard from on matters that greatly affect her. One of the purposes of the Due Process Clause is to reduce the incidence of error in deprivations of life, liberty, or property. See, Fuentes vs. Shevin, 407 US 67, 80-81, 32 L. Ed 2d 556, 92 S. Ct 1983 (1972).

Due Process consideration involves (1) a scrutiny of the private interest that will be, or is being, affected by the action contemplated, and (2) the risk that exists of an

erroneous deprivation of such a person's interests through the procedures used to accomplish the deprivation.

On the latter item (2), the risks are obvious: first, there is a real risk that her hips will not, or are not, healing properly, due to the lack of physical therapy she is not getting, leading to permanent wheelchair confinement (DLM stays strapped in a wheel chair from Friday to Monday, "because physical therapy does not work on week ends", as her children were told). This leads to the obvious eventuality of DLM being banished to a life of isolation, abandonment, rejection, declining mental and physical health, and death, in the confines of some institutional facility.

As to former Due Process consideration item (1) above, it is DLM's entire real and personal properties that are her "private interests", as well as her interests in the right to pursue happiness, the peace and enjoyment of life encompasses in her Liberty interest, and as former Supreme Court Justice William O. Douglas put it, DLM's right is

simply "to be let alone". This is the crux of the Fourth Amendment.

No elaboration should be needed on the personal value that articles and artifacts within one's home of long standing bear on the "private interest" of the person that is being affected. The home is her castle, and everything therein is a part of her territorial reign. Nor, need one's material possessions be grandiose. As one Court aptly expressed it with respect to application of this same constitutional protection for inmates:

"The possessions that a man is allowed to keep in his cell are meager indeed, being limited to things like a few pictures, magazines, cigarettes, candy bars, and perhaps an extra pair of socks. Nonetheless, these items are cherished by the inmates." Hudson vs. Palmer, 82 L.Ed 2d , 104 S. Ct. The decision continued:

> "Personal letters, snapshots of family members, a souvenir, a deck of cards, a hobby kit perhaps a diary or a training manual for an apprentice in a new trade, or even a Bible — a

> variety of inexpensive items may enable a prisoner to maintain contact with some part of his past and an eye to the possibility of a better future".

Stevens, J., Id., concurring in part and dissenting in part.

The present situation is a prime example of wrongful intrusion, with a deplorable lack of genuine interest, that a stranger brings into the private life of another. It too often, as here, produces the classic, unlawful -- but predictable -- effect of causing unnecessary deprivations of liberty, privacy, and substantial if not fatal deprivations of her property and valued personal belongings. Logan vs. Zimmerman Brush Co., 455 US 422, 435-436, 71 L. Ed 2d 265, 102 S. Ct 1148 (1982).

Where DLM has a legitimate claim of entitlement to be in her home, and to stay in possession of it, it is her property and her wrongful deprivation of it that falls within the meaning and protections of the Due Process Clause".

Parratt vs. Taylor, 451 US 527, at 536, 68 L. Ed 2d 420, 101 S. Ct 1908 (1981).

Greer Jackson promised that DLM would be returned to her home as soon as she was able after rehabilitation. The facility charged with that rehabilitation itself says that DLM no longer needs its skilled care. Greer Jackson has breached his promised to DLM and the Court, and that breach, and the severe damages occasioned thereby, are growing each day.

The Constitution requires the Government, if it deprives people of their property, to provide due process of law and to make just compensation for any taking. Due process means that the person must be given the remedies promised. Parratt vs. Taylor, supra, at 451 US 527, 537-544, 68 L. Ed 2d 420, 101 S. Ct 1908 (1981). Due Process requires that DLM be given what she was promised...her home.

The Guardian's Discretion Is Not Absolute

It is well-settled that the discretion accorded a guardian or other agency employee is not absolute. E.g.,

Procunier vs. Martinez, 416 US 396, 405-406, 40 L. Ed 2d 224, 94 S. Ct 1800 (1974). Every individual retains those constitutional rights not inconsistent with legitimate governmental objectives. United States vs. Edwards, 415 US 800, 39 L. Ed 2d 771, 94 S. Ct 1234 (1974).

Even in situations when an institutional involvement into one's life is justified (not the case here), the mandate has consistently applied to all persons and government entities that "there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application". Wolff vs. McDonnell, 418 US 539, at 556, 41 L. Ed 2d 935, 94 S. Ct 2963 (1974).

"Human Decency Requires No Less" – The Duty To Protect

Misconduct and abusive conduct most often occur towards those in the least position to defend themselves. Thus it is that the courts are charged *with a special obligation* to protect the rights of those less able to protect

them themselves. United States vs. Bailey, 444 US 394, 423-424, 62 L. Ed 2d 575, 100 S. Ct 624 (1980) [Blackmun, J., dissenting]. This Court has that higher duty to determine whether the guardian is abusing his power, and a constitutional mandate to maintain all DLM's freedom and fundamental rights using the "least intrusive" means possible.

> "The courts of this country, quite properly, have the special responsibility for protecting the constitutional rights of those unable to assert those rights themselves. The court must ensure that such persons, no less than any other person, receive just protection. The Constitution, as well as human decency, requires no less".

Justice O'Connor, concurring, in Hudson vs. Palmer, 82 L. Ed 2d 393.

Responsive to Jackson's abuse and misuse of his position in planning this as a financial windfall for himself, is the reminder of Thomas Jefferson's admonition:

> "Those that give up (one's) liberty to get a personal safety, deserve neither liberty nor safety"

Violation Of DLM's Right To Privacy

The Privacy guaranteed to each of us by the Fourth Amendment has been judicially held to be one of those Constitutional rights that are of "general application" (as are the other rights that are implicated). Its test, therefore, requires that every search or seizure of "papers and effects" -- as Jackson has threatened by eviction notices served at DLM's residence against her wishes -- be evaluated for its reasonableness.

Jackson's Confinement Of DLM Constitutes An Ongoing Seizure Of Her Person And Property

Jackson has impinged upon DLM two types of harm under the Fourth Amendment: that of privacy violations and that of possessory violations.

DLM's privacy continues to be violated...indeed, there is no privacy at all...by forcing her to stay, involuntarily, at University Park, subject always to anybody coming in, at any time, in disregard of her privacy. The

Fourth Amendment applies with equal force to all rightful expectations of privacy. Lyon vs. Farrier, 727 F 2d 766, 769 (CA8 1984).

DLM's possessory rights also continue to be violated...deprivation of her right to possession of her house and her personal belongings therein. Jackson's secretive conduct has now been exposed, as others have learned that he has done nothing towards DLM's release. Jackson continues even as he tries now to take over her property, with his secretive attitude. [1]

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[1] Not only does Jackson secrecy work to inflict Fourth Amendment injuries, it imposes a considerable, growing and insurmountable financial detriment to DLM. She has a home to return to, but because of Greer Jackson's inaction, DLM has being forced to pay for a period of time approximate charges of **$100 per day**, and this is on her social security retirement income. This altogether unnecessary expense was for staying at the rehabilitation facility whose skilled care they have said she no longer needs, and from which, she desparately wants, and has wanted continuously, to leave, to return to her home waiting for her.

Dmorrissey's possession and embracement of her familial bonds with her immediate familty is fundamental in our Constitution, and is being ignored.

The Fourth Amendment protects DLM's *possessory interests* in her property, and her son's possessory interest in residing at that property, pursuant to his mother's wishes. This is entirely separate and apart from whatever personal privacy interest DLM has in he

property and possessions that Jackson has violated or intends to violate by his eviction threats and continued detention of DLM at the rehabilitation facility. Hudson vs. Palmer, 82 L. Ed 2d 393.

> "The first clause of the Fourth Amendment provides that the "right of the people to be secure in their...houses, papers and effects, against unreasonable searches and seizures, shall not be violated..."". This text protects two kinds of expectations. one involving "searches," the other "seizures". A "search" occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A "seizure" of property occurs when there is some meaningful interference

> with an individual's possessory interests in that property."

United States vs. Jacobsen, 466 US ___, ___, 80 L. Ed 2d 85, 104 S. Ct 1652 (1984).

The Fourth Amendment's reasonableness of the government's complained of action is determined by weighing the asserted governmental interests against the particular invasion of the individual's privacy and possessory interests as established by the facts of the case. See, Terry vs. Ohio, 392 US 1, 17-18, n 15, 20 L. Ed 2d 889, 88 S. Ct 1868 (1968). The duration of a seizure (in this case threatening to be perpetual) is a factor to be considered in Fourth Amendment analysis. United States vs. Place, 462 US ___, ___, 77 L. Ed 2d 110, 103 S. Ct. 2637 (1983). When the duration threatens to be permanent so to amount to destruction of the possessory interest, that is to be taken into consideration, favorably for the DLM, in finding a Fourth Amendment violation. United States vs. Jacobsen, 466 US ___, ___, 80 L. Ed 2d 85, 104 S. Ct 1652 (1984).

There is no doubt then that the facts presented here adequately state a "seizure" within the meaning of the Fourth Amendment by the guardian continuing to hold DLM in confinement at University Park and depriving her of her possessions at home. This has occurred since on or about August 8, 1997, when DLM no longer needed skill care and was available to be released. Jackson, in neglect of his responsibility and duty as her guardian, and solely by a misuse of the power entrusted to him in his role as guardian, has wrongly asserted "dominion and control" over DLM's property to her exclusion and deprivation. Hence, Jackson's conduct "does constitute a seizure within the meaning of the Fourth Amendment". United States vs. Jacobsen, 466 US ___, at ___, 80 L. Ed 2d 85, 104 S. Ct 1652.

The possessory interests the Fourth Amendment protects are those of the citizen. From DLM's standpoint, it makes no difference what Jackson did, if anything, with her property once it takes her away from it, or deprives her from

going back to it. The fact is she has been deprived of her possessory interest in it. [2]/

Jackson's Conduct Imposes Cruel And Unusual Punishment Against All Plaintiffs In Violation Of The Eighth Amendment

The Eight Amendment forbids "cruel and unusual punishments." Its proscriptions are measured by society's "evolving standards of decency". Rhodes vs. Chapman, 452 US 337, 346-347, 69 L. Ed 2d 59, 101 S. Ct 2392 (1981). While the Eight Amendment is usually invoked in criminal case settings, it is by no means limited to the criminal law and its proscriptions are equally applicable to punishment inflicted under the civil law. For example, wrongly withholding one's cherished possessions from an individual has been said "not to comport with any civilized standard of

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[2]/ In addition, the existence of remedies against the State for this seizure is, of course, irrelevant to the Fourth Amendment question since 42 USC 1983 [42 USCA 1983] provides a remedy for damages for Fourth Amendment violations *supplemental to* any state remedy that may exist. Monroe vs. Pape, 365 US 167, 183, 5 L. Ed 2d 492, 81 S. Ct 473 (1961). Patsy vs. Board of Regents, 457 US 496, 73 L. Ed 2d 172, 102 S. Ct 2557 (1982).

decency" so to violate one's Eighth Amendment protections. Hudson vs. Palmer, 82 L. Ed 2d 393 (Justice O'Connor, concurring).

Jackson's conduct amounts to harassment of DLM and of those close to her. Specifically to this Complaint and requested TRO, those close to her include her children, who were with her at home almost daily, DLM's friend and tenant Bill Drumeller, whom Jackson is trying to evict from DLM's house contrary to DLM wanting him to stay there.

The "intentional harassment" of any citizen cannot be tolerated by a civilized society under the Eighth Amendment. Hudson vs. Palmer, 82 L. Ed 2d 393 at 404. The continued seizure of DLM being perpetrated by defendant, as exists here, is in violation of Virginia law [(1) a guardian cannot affect real estate without prior court order; (2) the guardian is to assist, not to replace, one who is only incapacitated following a physical surgery; (3) the lower court never held that Dmorrissey's wishes no longer matter, contrary to Jackson's view], and serves no purpose except harassment

(and possibly carry out a personal agenda of the petitioner Lu Morrissey, as puppeteer of Jackson).

This, and the personal isolation and abandonment that follows, constitute a violation against DLM of the Eighth Amendment's proscription against cruel and unusual punishment.

Common Sense And Fundamental Notions Of Decency Require DLM's "Release"

This synthesis of the constitutional protections accorded a person and their private property corresponds with both common sense and common understanding. It is not a fine point of law to be understood and interpreted only by someone with Jackson's ivory tower view of authority.

Common sense, i.e., "the seat of the pants wisdom of the average person", mandates the immediate relief sought herein for Mrs. Morrissey. Such deprivations, professionals in the field have repeatedly confirmed, cause the individual to devalue themselves and others, lose self-respect and independence, and become prone to unusual behavior and at

times violence. Schwartz, *Deprivation of Privacy as a "Functional Prerequisite"*. 63 J. Crim L. & Criminology 229 (1972). It is anomalous to take one into "elder custody" for allegedly physical therapy for hip replacement recovery in an effort to have her regain her independence and mobility she previously enjoyed, while simultaneously subject her to unjustified and degrading control over her every movement and independent decision making.

When added to this is the betrayal dishonesty of her guardian in promising the return to her home, yet in reality doing nothing on that promise, then any label of reasonableness put on this has to be so convoluted as to be unrecognizable by anyone other than Jackson himself, who by his inconsistent conduct, is no longer believable.

And lastly...

It is that Bill of Rights to which the Court must be faithful that is to ensure that certain principles will not be

sacrificed to expediency, and hence the plea for entry of the TRO:

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property,...and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

West Virginia Board of Education vs. Barnette, 319 US 624, 638, 87 L. Ed 2d 1628, 63 S.Ct 1178, (1943).

WHEREFORE, for these reasons and in consideration of the points and authorities as discussed, the TRO should be, and is asked to be, entered.

Respectfully submitted,

DOROTHY LUX MORRISSEY

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/ s /
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APPENDIX EXHIBIT #9

IN THE UNITED STATES DISTRICT COURT
At Richmond

CATHERINE M. JACKSON, and MICHAEL J. MORRISSEY For themselves and on behalf of DLM	)	
Petitioners	)	
vs.	)	Civil Action No. 3:98 CV 87 (Jdg. Spencer)
GREER JACKSON	)	(Petition for Writ of
Respondent	)	Habeas Corpus)

PETITIONERS' NOTICE OF APPEAL

Petitioners file this Notice of their Appeal to the Court's March 12, 1998 order entered in this case.

_____/ s /_____
CATHERINE M. JACKSON

_____/ s /_____
MICHAEL J. MORRISSEY

Catherine M. Jackson
Michael J. Morrissey
7910 Topaz Road
Richmond, Va. 23228

(804) 266-6093

April 10, 1998

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 1998, I did have a copy of the foregoing "Petitioners' Notice of Appeal" mailed by first class mail, postage prepaid, to respondent Greer Jackson, 8550 Mayland Drive, Richmond, Va.

_____/ s /_____